

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ALLIED PROPERTY AND CASUALTY)
INSURANCE COMPANY)

Plaintiff,)

v.)

TYLER SIMPSON,)

Defendant.)

Case No. 4:14-CV-948

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Comes now Defendant, Tyler Simpson, by and through his attorneys, and for his Memorandum of Law in Support of his Motion to Dismiss Plaintiff's Complaint for Declaratory Judgment, for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, states:

Plaintiff Allied Property & Casualty Insurance Company filed this Complaint for Declaratory Judgment against Defendant Tyler Simpson, alleging that jurisdiction is proper based on diversity of citizenship, and that Defendant "claims to be entitled to payment under an insurance policy with a limit of liability in excess of \$75,000.00."

Plaintiff's Complaint for Declaratory Judgment seeks a judgment in its favor that Plaintiff has no obligation to pay Defendant pursuant to the Underinsured Motorist Coverage of its automobile liability policy, for his automobile collision of March 16, 2013, because the vehicle he collided with did not meet the policy definition of an underinsured motor vehicle.

Plaintiff's policy issued to Defendant provided \$100,000.00 in underinsured motorist coverage, and the driver involved in the March 16, 2013 collision, had a liability policy limit of \$100,000.00.

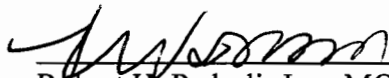
Plaintiff's Complaint is premature, as at this point there is no basis to claim that Defendant's claimed damages are in excess of \$75,000.00, Defendant's counsel has not forwarded copies of Defendant's medical records to Plaintiff, there is no evidence that Plaintiff's damages exceed \$75,000.00, and Defendant has made no demand for settlement in excess of \$75,000.00. If plaintiff agreed that coverage was available, Defendant would have sent a demand package seeking less than \$75,000.00 in damages.

Defendant is not seeking an amount in excess of \$75,000.00, exclusive of attorney's fees and penalties. See attached affidavit of Defendant's attorney.

Instead of answering the coverage question posed to Allied by Plaintiff, and waiting for any response, Allied filed suit so as to seek the forum of its choice.

Plaintiff had an option to wait and see how Missouri law developed on the Allied policy language in issue before incurring costs and fees.

WHEREFORE, Defendant Tyler Simpson prays that the Court enter an Order dismissing Plaintiff's Complaint for Declaratory Judgment for Failure to state a claim as Plaintiff has not properly invoked the diversity jurisdiction of this court under 28 U.S.C. Section 1332, and to enter any further Orders as are appropriate.



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CERTIFICATE OF SERVICE

A copy of the foregoing was E-filed, this 21 day of July, 2014, and to be served by operation of the Court's electronic filing system upon the attorneys of record.

